

148 FERC ¶ 61,245
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Pacific Gas and Electric Company

Docket No. ER14-2529-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF CHANGES AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 30, 2014)

1. On July 30, 2014, pursuant to section 205 of the Federal Power Act (FPA),¹ Pacific Gas and Electric Company (PG&E) submitted a proposed rate increase under its Transmission Owner Tariff (TO Tariff).² In this order, we accept the proposal for filing, suspend it for five months to become effective on March 1, 2015, subject to refund, and establish hearing and settlement judge procedures.

I. Background

2. On July 30, 2014, PG&E submitted in the instant filing its sixteenth TO Tariff filing (TO16), requesting an increase in TO Tariff transmission service rates, effective October 1, 2014. PG&E states that the proposed rate increase will allow it to recover the costs associated with significant electric transmission infrastructure expansion and replacement that has occurred in 2014 to date and the costs it expects to occur during the balance of 2014 and in 2015. PG&E forecasts that it will invest \$975 million in capital projects in 2014 and an additional \$1.159 billion in capital projects in 2015.³

¹ 16 U.S.C. § 824d (2006).

² PG&E adopted the TO Tariff in 1997 after turning over operation of its electrical transmission facilities to the California Independent System Operator Corporation (CAISO). The TO Tariff establishes the jurisdictional transmission revenue requirement that reflects PG&E's costs of constructing and owning its transmission system.

³ PG&E July 30, 2014 Transmission Owner Tariff Filing at 2 (PG&E TO16 Filing).

3. PG&E states that its 2014 Period II network transmission rate base is \$5.118 billion, a 25.2 percent increase from its 2013 Period I rate base of \$4.087 billion.⁴ PG&E states that its projected revenue requirement for retail network transmission service for 2015 is \$1.366 billion, a 32.5 percent increase over the \$1.031 billion in annual revenues that PG&E expects its current network transmission retail rates to produce. PG&E projects a wholesale network transmission revenue requirement of \$1.353 billion for 2015, an approximately 31.7 percent increase over its current \$1.027 billion revenue requirement. PG&E anticipates collecting \$133.1 million in CAISO wheeling revenues for 2015, a 16.7 percent increase over the \$114.1 million in wheeling revenues it expects to collect under its current rates.⁵

4. PG&E proposes a return on equity (ROE) of 11.26 percent, comprised of a base return of 10.76 percent⁶ plus a requested 50 basis point incentive adder for its continued participation in CAISO.⁷ PG&E states that it continues to be eligible for the ROE adder even though its participation in CAISO is ongoing, as opposed to new, because the Commission has not placed an expiration date on this incentive. PG&E also proposes to increase its depreciation rate from the current level of 2.56 percent to 3.28 percent. In support of its request, PG&E states that the low depreciation rates the Commission has approved in previous rate cases put PG&E at risk of deferring cost recovery into the future, leading to potential rate shock for future customers as well as intergenerational inequity.⁸

5. PG&E requests that the Commission waive its obligation to provide the information required in Statement BC—Reliability Data, Statement BI—Fuel Cost Adjustment Factors, and Statement AH—Operation and Maintenance (O&M) Expenses. In support of its request, PG&E states that it no longer maintains the data requested in Statement BC because CAISO has been responsible for setting reliability standards and tracking reliability data since March 31, 1998.⁹ PG&E also argues that filing Statement BI is unnecessary because its proposed tariff revisions do not include a fuel

⁴ The 2013 Period I rate base reflects recorded data for the 12 months ending December 31, 2013. The 2014 Period II rate base reflects estimated data for the 12 months ending December 13, 2015. *Id.*, Exhibit PGE-1 at 2:3-5.

⁵ *Id.* at 2.

⁶ *Id.*, Exhibit PGE-14 at 19-21.

⁷ *Id.*, Exhibit PGE-1 at 6:25-26.

⁸ *Id.*, Exhibit PGE-10 at 14.

⁹ *Id.* at 2.

cost adjustment clause. Finally, PG&E explains that its Statement AH does not include recorded or forecasted monthly fuel, water for power, and purchased power because it does not propose to change any power, fuel clause, or production-related service or rate.¹⁰

6. PG&E requests that the Commission accept its proposed rates to be effective October 1, 2014, subject to a nominal, one-day suspension.

II. Notice of Filing and Responsive Pleadings

7. Notice of PG&E's filing was published in the *Federal Register*, 79 Fed. Reg. 45,793 (2014) with interventions and protests due on or before August 20, 2014.

8. The California Public Utilities Commission (CPUC) filed a notice of intervention and protest. Timely motions to intervene were filed by the City and County of San Francisco, Southern California Edison Company, and Trans Bay Cable LLC. Timely motions to intervene and protests were filed by the California Department of Water Resources State Water Project (SWP); the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities); the Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency (Cities/M-S-R); Energy Producers and Users Coalition (EPUC);¹¹ Modesto Irrigation District (Modesto); Northern California Power Agency (NCPA); Sacramento Municipal Utility District (SMUD); State Water Contractors (SWC); and the Transmission Agency of Northern California (TANC) (collectively, Protestors).¹²

9. On August 27, 2014, PG&E submitted an answer. On September 8, 2014, EPUC submitted an answer to PG&E's answer.

¹⁰ *Id.* at 3.

¹¹ EPUC is an ad hoc group representing the electric end-use and customer generation interests of the following companies: Aera Energy LLC, BP West Coast Products LLC, Chevron U.S.A. Inc., Phillips 66 Company, ExxonMobil Power and Gas Services Inc., Shell Oil Products US, THUMS Long Beach Company, and Occidental Elk Hills, Inc.

¹² Cities/M-S-R, Modesto, and SMUD concur with the arguments and requested relief reflected in the TANC Protest.

III. Protests and Answers

A. Motion for Summary Disposition

10. TANC requests that the Commission grant summary disposition with respect to two aspects of PG&E's filing. First, TANC asserts that PG&E has failed to follow Commission precedent by allocating its Period II Weighted Average Common, General, and Intangible Plant in Service (CGI Plant) primarily on the basis of plant rather than labor costs.¹³ TANC states that PG&E's failure to assign CGI Plant using labor allocators results in over-allocation to Period II Network Transmission Weighted Average Gross Plant of \$93.571 million.¹⁴ TANC asserts that PG&E has failed to meet its burden to justify its deviation from Commission precedent and that its motion meets the Commission's criteria for granting summary disposition. TANC also states that use of labor allocators is consistent with longstanding Commission policy.¹⁵

11. Second, TANC asserts that PG&E fails to comply¹⁶ with the Commission's policy of requiring companies to use the gross proceeds methodology to calculate long-term debt costs.¹⁷ Citing *System Energy Resources, Inc.*, TANC states that the Commission has found that the debt component of capital structure should reflect the company's total obligation to its creditors and this methodology provides a more accurate picture of the company's capital structure and cost of capital.¹⁸ Therefore, TANC asserts that the Commission should grant summary disposition and direct PG&E to use the gross

¹³ TANC Protest at 15-17 (citing *Minn. Power & Light Co.*, 5 FERC ¶ 61,091, at 61,150-51 (1978); *Entergy Servs., Inc.*, 130 FERC ¶ 61,026, at P 88 (2010); *Delmarva Power & Light Co.*, 17 FERC ¶ 63,044, at 65,204 (1981); *Pub. Serv. Co. of New Mexico*, 10 FERC ¶ 63,020, at 65,126 (1980)).

¹⁴ *Id.* at 17.

¹⁵ *Id.* (citing *S. Cal. Edison Co.*, 92 FERC ¶ 61,070, at 61,267-68 (2000); *Utah Power & Light Co.*, 18 FERC ¶ 61,236, at 61,475-76 (1982)).

¹⁶ SWC also argues that PG&E has failed to comply with the Commission's policy of using gross proceeds to calculate long-term debt. SWC Protest at 9.

¹⁷ TANC Protest at 18.

¹⁸ *Id.* (quoting *Sys. Energy Res., Inc.*, Opinion No. 446, 92 FERC ¶ 61,119, at 61,447-49 (2000)).

proceeds of long-term debt principal outstanding to calculate the debt component of its capital structure.¹⁹

B. Protests

12. Protestors generally argue that PG&E's rate increase is unjust, unreasonable, and substantially excessive, and that the Commission should suspend PG&E's proposed rates for the maximum five-month period, subject to refund. Protestors also assert that PG&E's TO16 Filing presents numerous issues that require formal discovery and, thus, request that the Commission set PG&E's proposed rates for hearing and settlement procedures, as discussed below.

13. Protestors contend that PG&E's proposed base ROE of 10.76, which PG&E states is based on the methodology that the Commission adopted in Opinion No. 531,²⁰ is unjust and unreasonable. TANC asserts that the Commission recognized that the application of Opinion No. 531 will be an issue of fact in each proceeding, stating that, "the proper methodology [for DCF analyses] will be determined on a fact-specific basis for individual utilities."²¹ Protestors argue that the circumstances presented in Opinion No. 531 are not comparable to those in the instant filing because PG&E, unlike the merchant transmission owners that were the subject of the complaint in Opinion No. 531, faces a different risk profile. Protestors also assert that the Commission's ROE determination in Opinion No. 531 was based on specific, unique market conditions that existed during the period of October 2012 to March 2013 that applied to that particular case and no longer exist.²² Furthermore, Protestors state that PG&E has failed to demonstrate that anomalous market conditions or highly unusual circumstances exist and warrant an upward adjustment to its base ROE, consistent with Commission precedent.²³ Instead, Protestors contend that the Commission should require PG&E to calculate its ROE using

¹⁹ *Id.* at 19.

²⁰ *Martha Coakley, Mass. Attorney Gen., et al. v. Bangor Hydro-Electr. Co., et al.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014).

²¹ TANC Protest at 43, 45.

²² CPUC Protest at 8; SWC Protest at 7; SWP Protest at 12-13.

²³ TANC Protest at 52-53.

the median of its Discounted Cash Flow (DCF) analysis, which results in a base ROE of 8.8 percent and lowers PG&E's revenue requirement by \$88 million.²⁴

14. Protestors also dispute certain aspects of PG&E's DCF analysis, such as its inclusion of Portland General Electric Company (Portland General) in its proxy group. Protestors generally assert that PG&E should exclude Portland General from its DCF proxy group because Portland General's high cost of equity is does not represent PG&E's investor expectations and far exceeds that of every other utility in the proxy group.²⁵ In support of this claim, Protestors note that PG&E's requested ROE is higher than every other utility's cost of equity in its proxy group with the exception of Portland General. In addition, Protestors note several other flaws in PG&E's proposed ROE, such as its use of outdated financial data, failure to exclude companies with ongoing merger and acquisition activity, and use of non-DCF methodologies.²⁶

15. Also concerning PG&E's proposed ROE, Protestors dispute PG&E's request for a 50 basis point ROE adder for its continued participation in CAISO, which CPUC states comprises \$20 million of PG&E's requested revenue requirement.²⁷ CPUC asserts that the ROE adder is not justified because it does not encourage PG&E's participation in CAISO, which, according to CPUC is required by law and CPUC order. TANC requests that, during the hearing, the Commission reconsider whether the ROE adder is necessary for PG&E's continued participation in CAISO, particularly if the Commission chooses to depart from its traditional DCF analysis.²⁸

16. Protestors also assert that PG&E's proposed 3.28 percent depreciation rate is excessive and represents an unjustified increase from PG&E's current depreciation rate of 2.56 percent.²⁹ Protestors contend that PG&E's depreciation study contains several erroneous assumptions, such as overstating the negative net salvage estimate and understating the reasonably expected service lives of certain asset categories. Moreover,

²⁴ NCPA Protest at 5; Six Cities Protest at 15, 29; SWP Protest at 9. TANC states that, based on its calculated DCF analysis, PG&E's base ROE is 8.38 percent, which reduces PG&E's revenue requirement by \$129.77 million. TANC Protest at 48-49.

²⁵ Six Cities Protest at 9-10; SWC Protest at 7; SWP Protest at 10-11; TANC Protest at 48, 51.

²⁶ Six Cities Protest at 17; SWC Protest at 6; TANC Protest at 49, 51, 64-65.

²⁷ CPUC Protest at 10.

²⁸ TANC Protest at 76.

²⁹ CPUC Protest at 14; SWC Protest at 8; TANC Protest at 89-90.

Protestors claim that PG&E has historically overstated its proposed depreciation rate, despite the fact that its authorized depreciation rate has remained at 2.56 percent for three years.³⁰ Protestors estimate that reducing PG&E's depreciation rate to the current 2.56 percent rate reduces its transmission revenue requirement by up to \$63 million.³¹

17. Protestors generally argue that PG&E's TO16 Filing raises several other issues that require both the maximum five-month suspension and formal hearing procedures. For example, Protestors assert that many of the projects included in PG&E's proposed capital additions may not be operational during 2014-2015, a rate category that they argue PG&E historically overstates.³² In addition, Protestors contend that PG&E has both overstated and failed to justify increases in its O&M and administrative and general expenses, particularly if PG&E expects its load to decrease.³³ Protestors also point to PG&E's proposed Pensions and Benefits expenses, Period II Cashing Working Capital, and Short-Term Incentive Program as other expenses that lack sufficient justification and warrant further investigation.³⁴

18. Finally, EPUC requests that the Commission include the issue of cost allocation to the standby class in the hearing.³⁵ EPUC asserts that PG&E's use of the Sum of 12 monthly coincident peaks method for allocating costs to the standby class is discriminatory and increases rates by \$8.5 million.³⁶ EPUC claims that there is no evidence that PG&E operates its transmission system to provide service to standby customers in a different manner than it does to all other classes and should, therefore, allocate its costs to all classes of customers in the same manner. To further investigate

³⁰ PG&E's depreciation rate has remained at 2.56 percent for its past three rate cases, TO13 through TO15. Previously, PG&E's depreciation rate was 2.64 percent, which remained in effect for its TO10 through TO12 rate cases. TANC Protest at 91; SWP Protest at 14; Six Cities Protest at 30.

³¹ CPUC Protest at 13; Six Cities Protest at 3; SWP Protest at 15.

³² CPUC Protest at 13-14; NCPA Protest at 4; Six Cities at 45; SWC Protest at 9; SWP Protest at 17.

³³ CPUC Protest at 15; Six Cities Protest at 31, 40; TANC Protest at 3, 30.

³⁴ Six Cities Protest at 41, 43; TANC Protest at 39.

³⁵ PG&E's TO Tariff defines standby service as the delivery of backup power to standby service customers in the event of an outage of a generating unit serving the standby customer's load.

³⁶ EPUC Protest at 4.

this issue, EPUC requests that the Commission include cost allocation to the standby class in the hearing so that it can gather evidence to justify further litigation of PG&E's cost allocation to the standby class.³⁷

C. PG&E's Answer

19. In response to TANC's Motion for Summary Disposition, PG&E notes that the Commission previously denied a motion for summary disposition concerning the allocation of CGI Plant its fourteenth TO Tariff rate case, setting the issue for hearing.³⁸ In addition, PG&E states that the Commission denied two motions for summary disposition, both submitted by TANC, concerning the calculation of the long-term debt component for its capital structure, setting the issue for hearing in both PG&E's fourteenth and fifteenth TO Tariff rate cases.³⁹ PG&E distinguishes the precedent TANC relies on for the proposition that Commission policy is to require the use of gross proceeds for long-term debt principal outstanding in calculating the debt component of a company's capital structure. Rather, PG&E argues, in the precedent TANC cites, the Commission had rejected a company's proposal to use a net proceeds method because the company had failed to justify its proposal. In any event, PG&E states, the issue was decided following an evidentiary hearing.⁴⁰ Thus, PG&E argues that the issues identified by TANC in its Motion for Summary Disposition raise issues of material fact that should be set for hearing, rather than summary disposition, consistent with Commission precedent.

20. PG&E also argues that the Commission should summarily reject EPUC's request to set PG&E's standby rate design for hearing. PG&E explains that, in its sixth TO Tariff case, the Commission found its standby rate methodology, the same methodology that PG&E uses in the instant filing, to be just and reasonable.⁴¹ In fact, PG&E states that the Commission has rejected EPUC's request to relitigate the issue in four of its other TO Tariff rate cases, finding that EPUC had failed to present new evidence or changed circumstances to warrant relitigation.⁴² PG&E argues that EPUC again fails to meet its

³⁷ *Id.* at 5.

³⁸ PG&E Answer at 2.

³⁹ *Id.* at 4.

⁴⁰ *Id.* at 4-5 (citing Opinion No. 446, 92 FERC ¶ 61,119 (2000)).

⁴¹ *Id.* at 6.

⁴² *Id.* at 6-7 (citing *Pacific Gas and Elec. Co.*, 124 FERC ¶ 61,305 at PP 23-25).

burden and, thus, asserts that the Commission should not include the issue of standby rate design in the scope of the hearing.

21. Finally, PG&E asserts that the Commission should summarily affirm its request for the 50 basis point adder for continued participation in CAISO, which the Commission has consistently granted in PG&E's previous TO Tariff rate cases.⁴³

D. EPUC's Answer

22. EPUC reiterates its argument that additional discovery is necessary to determine whether the allocation factors PG&E used to allocate costs to the standby class are accurate. EPUC states that if a change to the data used to develop the allocation factors for the standby class cost methodology have changed, then this may amount to a changed circumstance, warranting a new review of the reasonableness of the standby rates.⁴⁴

IV. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴⁵ the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

24. Rule 213 of the Commission's Rules of Practice and Procedure⁴⁶ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by PG&E and EPUC because they have provided information that assisted us in our decision-making process.

B. Commission Determination

25. Our preliminary analysis indicates that PG&E's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept PG&E's proposed rates for filing, suspend them for five months to become effective March 1, 2015, and make them subject to refund.

⁴³ *Id.* at 8.

⁴⁴ EPUC Answer at 3.

⁴⁵ 18 C.F.R. § 385.214 (2014).

⁴⁶ 18 C.F.R. § 385.213(a)(2) (2014).

26. In *West Texas Utilities Co.*,⁴⁷ the Commission explained that, when its preliminary examination indicates that proposed rates may be unjust and unreasonable and may be substantially excessive, as defined in *West Texas Utilities Co.*, it would generally impose a five-month suspension. In this proceeding, we find that PG&E's proposed rates may yield substantially excessive revenues. Accordingly, we will suspend PG&E's proposed rates for five months and set PG&E's proposed rates for hearing and settlement judge procedures, as ordered below.

27. We find that PG&E's filing raises issues of material fact that, to the extent not summarily disposed of in this order, are more appropriately addressed at hearing, as discussed further below. These issues include PG&E's calculation of a just and reasonable ROE. Notably, the Commission recently issued Opinion No. 531,⁴⁸ in which the Commission changed its practice for determining the ROE for public utilities. Accordingly, we expect the participants' evidence and DCF analyses to be guided by our decision in Opinion No. 531.

28. As noted in PG&E's answer, the Commission has previously found that the two issues for which TANC seeks summary disposition—i.e., the allocation of CGI Plant and the calculation of the long-term debt component of PG&E's proposed capital structure—could not be resolved based on the record before us.⁴⁹ Similarly, we find here that these issues are more appropriately addressed in the hearing procedures ordered below and, therefore, deny TANC's motion for summary disposition.

29. We also reject EPUC's request to conduct discovery related to the cost allocation methodology for the standby class of customers as part of the hearing procedures in this proceeding. PG&E's methodology to allocate costs to standby customers has been fully litigated before the Commission.⁵⁰ The Commission has found such allocation to be just and reasonable,⁵¹ and has continued to uphold its decision in PG&E's subsequent rate cases.⁵² Though affected parties are not forever barred from reexamining the cost allocation methodology for standby customers, any party challenging a Commission-

⁴⁷ 18 FERC ¶ 61,189 (1982).

⁴⁸ See *Martha Coakley, Mass. Attorney Gen., et al. v. Bangor Hydro-Electr. Co., et al.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014).

⁴⁹ PG&E Answer at 2-4.

⁵⁰ Opinion No. 482, 113 FERC ¶ 61,084 (2005).

⁵¹ *Id.* P 65.

⁵² *Pacific Gas and Elec. Co.*, 124 FERC ¶ 61,305, at PP 23-25 (2008).

approved rate design must present new evidence or significant changed circumstances to warrant authorizing relitigation of the issue, or collateral estoppel lies.⁵³ We find that EPUC has neither presented new evidence nor changed circumstances here warranting the relitigation of this issue. We have also previously denied requests for discovery regarding an issue that the Commission has not set for litigation.⁵⁴ We do so here once more and, therefore, deny EPUC's request.

30. Finally, consistent with previous Commissions orders, we summarily accept PG&E's request for a 50 basis point incentive ROE adder for its continued participation in CAISO and grant PG&E's request for waiver of the obligation to provide the information in Statement BC, Statement BI, and Statement AH.⁵⁵ Parties opposing PG&E's request for the 50 basis point adder for participation in CAISO have presented no new evidence or circumstances to warrant reexamining whether the adder is appropriate in this proceeding.

31. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁵⁶ If the parties desire, they may, by mutual agreement, request a specific judge as the Settlement Judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁵⁷ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to

⁵³ *Pacific Gas & Elec. Co.*, 121 FERC ¶ 61,065, at PP 42-43 (2007) (order denying motion to permit further litigation, and finding that party had failed to present sufficient new evidence or significant changed circumstance to warrant relitigation of the standby rate design issue).

⁵⁴ *See Natural Gas Pipeline Co. of America*, 43 FERC ¶ 61,194, at 61,517 (1988).

⁵⁵ *Pacific Gas and Elec. Co.*, 144 FERC ¶ 61,227, at P 20 (2013); November 2012 Order, 141 FERC ¶ 61,168 at P 24.

⁵⁶ 18 C.F.R. § 385.603 (2014).

⁵⁷ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) PG&E's proposed transmission owner tariff rates are hereby accepted for filing and suspended for five months to become effective March 1, 2015, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held in Docket No. ER14-2529-000 concerning the justness and reasonableness of PG&E's proposed transmission owner tariff rates, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C), (D), and (E) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates a settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and

to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.